

Thomas M. James DOC # 98106 ASPC-Douglas Mohave North P.O. Box 5002 Douglas, AZ 85100-8	FILED U.S. DISTRICT COURT INDIANAPOLIS DIVISION SOUTHERN DISTRICT OF INDIANA LAURA A. BRIGGS CLERK	United States District Court Southern District of Indiana Indianapolis Division No. 1:13-cv-541-WTL-TAB.
Thomas M. James, Plaintiff, v. Dr. Lorenzo Eli, et.al., Dr. Nicolas P. Villanustre, and all other's acting in concert, ABC/Xyz, Corp. Defendants.		Plaintiff Pro Per Motion Pursuant to Rule 26, 33, 34, F.R.C.P. with Declaration In Support. Motion for Discovery & Disclosure, Production of documents, Interrogatories, In Response To Summary Judgment Motion by Defendant 1/28/14. Hon. William T. Lawrence, Judge.

Pursuant to Rule 26, 33, 34, F.R.C.P, plaintiff respectfully requests the honorable court for the following relief (with declaration filed concomitantly in support). A memorandum follows:

Memorandum

Standard of Review:

The provision, which concerns prospective relief, defines "prison conditions" -

- to mean, "the conditions of confinement or the effect of actions by government officials on the lives of persons confined in prison", See Booth -v- Churner, 206 F.3d 289, 294-295 (C.A. 3, 2000), off'd on other grounds, 532 U.S. 731, (2001) (reading § 3626(g)(2) to cover all prison conditions and corrections officer's actions that make [prisoner's] lives worse." See Booth, held, that § 1997e(a) mandates initial recourse to the prison grievance process even when a prisoner seeks only money damages, a remedy not available in that process. (l.d.) at 741.

"In order to establish an 8th amendment violation after incarceration, a prisoner must establish the unnecessary and wanton infliction of pain, mental or physical"; see Scher -v- Engelke, 943 F.2d 921 (8th cir. 1991), quoting, Cowans -v- Wyrick, 862 F.2d 697, 700 (8th cir. 1988). The scope of eighth amendment protection is broader than the mere infliction of physical pain as plaintiff urges, and evidence of fear, mental anguish, and misery inflicted through frequent retaliatory cell searches, segregation, moves to different units, some of which resulted in the loss of legal material, personal - property, dishevelment of plaintiff's cell, could suffice as the requisite injury for eighth amendment claim. See Wilson -v- Seiter, 501 U.S. 297, 111, S.Ct. 2321, 115 L.Ed.2d 271 (1991), held -

"we see (no) significant distinction between claims alleging inadequate medical care and those alleging inadequate condition of confinement. Indeed, the "medical care" a prisoner receives is just as much a "condition" of his confinement as the food he is fed, the clothes he is issued, the temperature he is subjected to in his cell, and the protection he is afforded against other inmates" - Some conditions of confinement may establish an 8th Amendment violation, in combination when each would not do so alone, but only when they have a mutually reinforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise - for example, a low cell temperature at night combined with a failure to issue blankets. The Supreme Court of the United States held, that to establish an 8th Amendment violation for cruel, unusual punishment, an inmate must allege both an objective element - (Here - deprivation is serious injury occurred) and a subjective element (Did the officials act with a sufficiently culpable state of mind?) (I.d.) - no they did not!

Statement of material factors under Dispute:

Plaintiff outlines his reasons to join defendant's in Arizona - D.O.C., with defendant's in Indiana -

- D.O.C., see (motion for leave to amend), join defendants, supra filed concomitantly with this motion, e' declaration in support). The combination here in this case have a mutually enforcing effect that "overall" produces the deprivation of a single, identifiable human need that was delayed, then upon that reason, surgery was denied because doctors felt plaintiff will be O.K. This life long debilitation, has, and still does create pain in migraines, - had all teeth pulled out - that didn't need to be pulled, and other continuing debilitations already addressed to the court that will effect plaintiff for the rest of his life - for reasons of budget constraints, and bias, e' prejudices against Arizona inmates in (A.C.C.F.) after riot, to exclude the continuing retaliation upon plaintiff upon his return to (A.D.O.C.) prison system. These factors under dispute combined, in deprivations support, that the retaliation was done to prevent plaintiff from being awarded compensation, because of said failure to perform surgery timely, are grounds to distinguish "some things wrong here" and "it needs to go away"; so (A.D.O.C.) purposely retaliated to prevent a tort claim from being filed - knowing plaintiff will fight a long battle in federal court to gain any relief if at all.

Plaintiff contends, and alleges and can prove a pattern of delay, neglect, or incompetence and a "series of incidents closely related in time", evidencing officially sanctioned neglect by the Corporation Staff of C.M.S. Medical.

This is a factor under dispute and supports reasons why this Court Should appoint counsel to plaintiff cause and appoint medical personnel in order to provide an ^a independent assessment of prisoner's complaint and actual injury occurrence. See Lopez Tijerina v. Ciccone, 324 F. Supp. 1265 (W.D. Mo. 1971); Prushinowski v. Hambrick, 520 F. Supp. 863 (E.D. N.C. 1983), "medical furlough ordered so that prisoner could obtain outside doctor's opinion".

Therefore, based on production of documents and Interrogatories requests sent to defendant, Dr. Villanstre, and this Court's orders stemming from pretrial schedule on 1/10/14, plaintiff respectfully requests the Court to grant all appropriate relief as is follows:

Requested Relief:

- 1) Issue its entry staging pretrial schedule pursuant any amends ordered in accordance to Rule 20 (2), (B); Rule 18 (b); Rule 19 (b) (4), F.R.C.P.

- based on broader scope under 8th Amend violations inflicted through retaliatory actions committed by Arizona- D.O.C. defendants in identifiable injury occurred in combination mutually enforcing effect. See 1st & 14th Amend. U.S. Const.; and deny defendant's motion for Summary Judgment; and

- 2) upon a stay of pretrial schedule, to let defendants & plaintiff continue disclosure process of proceeding, in order to finish said disclosure, & interrogatories to be answered within 30 days of service of said requests; and
- 3) Grant continuance of time of pretrial schedule of 90 days upon all defendants joined to give adequate time to answer and respond to all provisions of pretrial schedule after the Court determines the Amended pleading has merit and is colorable meritorious claims are asserted by plaintiff to proceed upon a pretrial schedule;
- 4) Grant plaintiff appointment of pro bono volunteer counsel and Expert medical person to develop the Amended 42 USC § 1983 complaint, to properly and appropriately name all defendants in this cause to be joined -

and a furlough ordered so plaintiff can obtain outside doctors opinion to rebut any opinion by defendant Doctor's and for defendant's expert Doctor's opinion.

Therefore, plaintiff respectfully requests this court to grant all requested relief before the court in all respects.

Respectfully Submitted on: February 12th, 2014.

Executed By: Thomas M. James

Thomas M. James, AOC #98106

Plaintiff In Pro Per

Certificate of Service

I, Thomas M. James, AOC #98106, hereby certify the foregoing documents.

#1) Pro Per motion for leave of Court Pursuant to Rule 20 (3), (B); Rule 18 (b); Rule 19 (b) (4), F.R.C.P. for Permission to include, Join Parties to Suit in Response to Defendants Summary Judgment, 1/28/14; and

#2) Plaintiff's Pro Per motion Pursuant to Rule-
-26; 33; 34 F.R.C.P. with Declaration in Support. Motion for Discovery, Disclosure Production of Documents, Interrogatories in Response to Summary Judgment Motion By Defendant, 1/28/14; with

SA) 2 copies of:

- i) First request for Production of Documents.
- ii) First Set of Interrogatories to Defendant, (Those Copies were sent to Defendants - Attorneys of Record only).

#3) Plaintiff's Pro Per Declaration in Support of Motion for leave, motions for discovery Supra; with 2 Exhibits. (A, B).

were sent out via-legal mail, postage pre paid from: ASPC- Douglas, Mohave County Unit, P.O. Box 5002, Douglas, AZ 85608 - 70.

Original Copies to:

Office of The Clerk of The Court.

U.S. District Court, Southern District of Indiana
105 U.S. Courthouse, 46 E Ohio Street
Indianapolis, Indiana 46204

Copies to:

Hon' William T Lawrence, Judge.

U.S. District Court, Southern District of Indiana
105 U.S. Courthouse, 46 E. Ohio Street
Indianapolis, Indiana 46204

Copies to:

Gerald B. Coleman,

Coleman Stevenson, c' Montel LLP

9101 Westogen Road, Suite 100

Indianapolis, Indiana 46268

2-Copies of: Production of documents, c' Interrogatories

Respectfully Submitted on: February 12th, 2014

Executed By: Thomas M. Jones

Thomas M. Jones, # 98106
Plaintiff In Pro Per

(2-0f-2)